

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 04-cv-12448

GMAC Mortgage Company

v.

Jeffrey L. Bayko, Sr., et al

**CLERK'S CERTIFICATE**

I, Sarah A Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 5/20/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on June 7, 2005.

Sarah A. Thornton, Clerk of Court

By: *Jeanette Ramos*  
Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled  
case is hereby acknowledged this date: 6/8/05.

*D. Barchas*  
Deputy Clerk, US Court of Appeals

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Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

## APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:04-cv-12448-GAO**

GMAC Mortgage Corporation v. Bayko et al      Date Filed: 11/18/2004  
Assigned to: Judge George A. O'Toole, Jr      Jury Demand: None  
Cause: 28:2410 Quiet Title      Nature of Suit: 890 Other  
Statutory Actions  
Jurisdiction: U.S. Government  
Defendant

**Plaintiff**

**GMAC Mortgage  
Corporation**

represented by **David M. Rosen**  
Harmon Law Offices, P.C.  
150 California Street  
Newton, MA 02458  
617-558-8411  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

V.

**Defendant**

**Jeffrey L. Bayko, Sr.**

**Defendant**

**Lisa J. Bayko**

represented by **Christine A. Faro**  
79 State Street  
Newburyport, MA 01950  
978-462-4833  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****Helen E. Bayko**

represented by **Timothy D. Sullivan**  
Andover Law PC  
451 Andover Street  
Suite 185  
North Andover, MA 01845  
508-794-0360  
Fax: 978-794-5457  
Email:  
[tsullivan@andoverlaw.com](mailto:tsullivan@andoverlaw.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****Michael J. Bayko**

represented by **Timothy D. Sullivan**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****BankNorth Group**

represented by **Michele A. Ouimet-Rooke**  
Doherty, Wallace, Pillsbury  
& Murphy  
Suite 1900  
1414 Main Street  
One Monarch Place  
Springfield, MA 01144-1900  
413-733-3111 X 375  
Fax: 413-734-3910  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****Hans R. Hailey**

**Defendant****Charles R. Rotondi**

represented by **Christine A. Faro**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****Commonwealth of  
Massachusetts (Department  
of Revenue)**

represented by **Eileen Ryan McAuliffe**  
Massachusetts Department of  
Revenue  
100 Cambridge Street  
P. O. Box 9565  
Boston, MA 02214-9565  
617-626-3217  
Fax: 617-626-3245  
Email:  
[mcauliffe@dor.state.ma.us](mailto:mcauliffe@dor.state.ma.us)  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****United States of America**

represented by **Barbara Smith Healy**  
United States Attorney's  
Office  
John Joseph Moakley Federal  
Courthouse  
1 Courthouse Way  
Suite 9200  
Boston, MA 02210  
617-748-3100  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Lydia Bottome Turanchik**  
U.S. Department of Justice -

Tax Division  
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Post Office Box 55  
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Washington, DC 20001  
202-307-6560  
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Email:  
Lydia.D.Bottome@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****Gary Evans****Defendant****Christine A. Faro**

represented by **Christine A. Faro**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE*  
*NOTICED*

**Defendant****John Aquino**

Date Filed	#	Docket Text
11/18/2004	(1)	NOTICE OF REMOVAL by United States of America from Essex Superior Court, case number 2004-01855-B. \$ 0., receipt number n/a, filed by United States of America. (Attachments: # (1) State court record) (Edge, Eugenia) Additional attachment(s) added on 12/6/2004 (Edge, Eugenia). Additional attachment(s) added on 12/9/2004. Notice of Removal and attachments combined. (Edge, Eugenia). (Entered:

		11/22/2004)
11/18/2004	•2	NOTICE of Appearance by Lydia Bottome Turanchik on behalf of United States of America. c/s (Edge, Eugenia) Modified on 12/7/2004 to correct filing date. (Edge, Eugenia). (Entered: 11/22/2004)
11/18/2004	•3	ANSWER to Complaint by United States of America.c/s(Edge, Eugenia) (Entered: 11/22/2004)
11/18/2004	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Edge, Eugenia) (Entered: 11/22/2004)
11/29/2004	•7	NOTICE of Appearance by Christine A. Faro on behalf of Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/03/2004)
11/29/2004	•8	ANSWER to Complaint by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s(Edge, Eugenia) (Entered: 12/03/2004)
11/29/2004	•9	Verified MOTION for Summary Judgment by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/03/2004)
11/29/2004	•10	MEMORANDUM of Law in Support re <u>9</u> MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/03/2004)
11/29/2004	•11	STATEMENT of facts in support re <u>9</u> MOTION for Summary Judgment.c/s (Edge, Eugenia) (Entered: 12/07/2004)
11/29/2004	•12	EXHIBITS 1 thru 13 not scanned re <u>9</u> MOTION for Summary Judgment by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi. (Edge, Eugenia) (Entered: 12/07/2004)
11/29/2004	•13	NOTICE of Appearance by Timothy D. Sullivan on

		behalf of Helen E. Bayko, Michael J. Bayko. c/s (Edge, Eugenia) (Entered: 12/07/2004)
11/29/2004	• 14	Verified MOTION for Partial Summary Judgment by Helen E. Bayko, Michael J. Bayko. Exhibits 1 thru 4 not scanned. c/s State Court Pleading See document #'s 25 and 26 for additional information. (Edge, Eugenia) Modified on 12/7/2004 to add text. (Edge, Eugenia). Modified on 12/8/2004 (Smith3, Dianne). (Entered: 12/07/2004)
11/29/2004	•	Notice of correction to docket made by Court staff. Text added to read: State Court pleading. See document #'s 25 and 26 for additional information. (Edge, Eugenia) Modified on 12/8/2004 (Smith3, Dianne). (Entered: 12/07/2004)
11/29/2004	• 15 c	Verified MOTION for Summary Judgment by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi. (Eugenia Edge) c/s. State Court Pleading. Refer to document #'s 25 and 26 for additional information....Modified on 12/8/2004 (Smith3, Dianne). (Entered: 12/07/2004)
11/29/2004	•	Opposition re <u>14</u> MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi. **NO IMAGE ATTACHED TO THIS ENTRY** Opposition combined with motion for summary judgment (see entry #15). State Court Pleading. See document #'s 25 and 26 for additional information. (Edge, Eugenia) Modified on 12/8/2004 (Smith3, Dianne). (Entered: 12/07/2004)
11/29/2004	• 16 c	Verified STATEMENT of facts re <u>15</u> MOTION for Summary Judgment and (statement of facts) in support of the opposition combined with <u>15</u> motion for summary judgment. State Court Pleading. See document #'s 25 and 26 for additional information. c/s (Edge, Eugenia) Modified on 12/8/2004 (Smith3, Dianne). (Entered: 12/07/2004)

11/29/2004	•17	Opposition re 15 MOTION for Summary Judgment filed by Helen E. Bayko, Michael J. Bayko. Exhibits A thru D not scanned. c/s (Edge, Eugenia) (Entered: 12/08/2004)
11/29/2004	•25	Letter/request (non-motion) from Timothy D. Sullivan. (Smith3, Dianne) Additional attachment(s) added on 12/15/2004 (Smith3, Dianne). (Entered: 12/08/2004)
11/29/2004	•26	Letter/request (non-motion) from Timothy Sullivan. (Smith3, Dianne) Attachment added on 12/15/2004 (Smith3, Dianne). (Entered: 12/08/2004)
11/30/2004	•18	MEMORANDUM in Support re 9 MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/08/2004)
11/30/2004	•	Opposition re 14 MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi. **No image attached to this entry**. Memorandum of law in support (entry 18) and this opposition combined in same pleading. (Edge, Eugenia) (Entered: 12/08/2004)
12/01/2004	•4	MOTION for Summary Judgment by BankNorth Group.c/s(Edge, Eugenia) Additional attachment(s) added on 12/7/2004 (Edge, Eugenia). Additional attachment(s) added on 12/9/2004 (Edge, Eugenia). (Entered: 12/03/2004)
12/01/2004	•5	MEMORANDUM in Support re 4 MOTION for Summary Judgment filed by BankNorth Group.c/s (Edge, Eugenia) (Entered: 12/03/2004)
12/01/2004	•6	AFFIDAVIT in Support re 4 MOTION for Summary Judgment.c/s (Edge, Eugenia) Modified on 12/7/2004 to add text. State Court Pleading. See document #'s 25 and 26 for additional information (Edge, Eugenia). Modified on 12/8/2004 (Smith3, Dianne). (Entered:

		12/03/2004)
12/01/2004	•	Notice of correction to docket made by Court staff. Document attached to entry #4 was replaced with correct document. (Edge, Eugenia) (Entered: 12/07/2004)
12/01/2004	• 19	Opposition re <u>15</u> MOTION for Summary Judgment, <u>9</u> MOTION for Summary Judgment filed by BankNorth Group. c/s(Edge, Eugenia) (Entered: 12/08/2004)
12/01/2004	• 20	Opposition re <u>14</u> MOTION for Summary Judgment filed by BankNorth Group.c/s (Edge, Eugenia) Modified on 12/8/2004 to change filing date (Edge, Eugenia). (Entered: 12/08/2004)
12/01/2004	•	Notice of correction to docket made by Court staff. Filing date on document reads: 11/31/04. Correction made to entry 20 to change filing date to read 12/1/04. (Edge, Eugenia) (Entered: 12/08/2004)
12/06/2004	•	Notice of correction to docket made by Court staff. Civil category sheet added to notice of removal. (Edge, Eugenia) (Entered: 12/06/2004)
12/07/2004	•	Notice of correction to docket made by Court staff. Text added to entry #6 to read: "This document was filed in state court" (Edge, Eugenia) (Entered: 12/07/2004)
12/07/2004	• 27	STATE COURT Record. (Attachments: # <u>1</u> Part two of State Court Record# <u>2</u> Part three of State Court Record)(Edge, Eugenia) (Entered: 12/09/2004)
12/08/2004	• 21	First MEMORANDUM in Opposition re <u>4</u> MOTION for Summary Judgment filed by Michael J. Bayko. (Sullivan, Timothy) Additional attachment(s) added on 12/9/2004 . Electronically filed document was not signed. Signed document attached (Edge, Eugenia). (Entered: 12/08/2004)
12/08/2004	• 22	First MEMORANDUM in Opposition re <u>4</u> MOTION

		for Summary Judgment filed by Helen E. Bayko. (Sullivan, Timothy) Additional attachment(s) added on 12/10/2004 signed document attached (Edge, Eugenia). Modified on 12/10/2004 to add text(Edge, Eugenia). (Entered: 12/08/2004)
12/08/2004	23 c	Opposition re <u>9</u> MOTION for Summary Judgment filed by Michael J. Bayko. (Attachments: # (1) Supplement Response to Memorandum of Law (Docket #10)# (2) Supplement Response to Statement of Facts (Docket #11))(Sullivan, Timothy) Additional attachment(s) added on 12/10/2004 (Edge, Eugenia). (Entered: 12/08/2004)
12/08/2004	24 c	Opposition re <u>9</u> MOTION for Summary Judgment filed by Helen E. Bayko. (Attachments: # (1) Supplement Response to Memorandum of Law (Docket #10)# (2) Supplement Response to Statement of Facts (Docket #11))(Sullivan, Timothy) Additional attachment(s) added on 12/10/2004 (Edge, Eugenia). (Entered: 12/08/2004)
12/09/2004	25	Notice of correction to docket made by Court staff. DOCUMENTS ATTACHED TO ENTRIES #21 & 22 ARE DUPLICATIVE. BOTH ENTRIES ARE OPPOSITIONS TO BANKNORTH'S MOTION FOR SUMMARY JUDGMENT. (Edge, Eugenia) Modified on 12/14/2004 to correct spelling (Edge, Eugenia). (Entered: 12/10/2004)
12/20/2004	28 c	MEMORANDUM in Opposition re <u>4</u> MOTION for Summary Judgment, <u>15</u> MOTION for Summary Judgment, <u>14</u> MOTION for Summary Judgment filed by United States of America. (Attachments: # 1 Exhibit # 2 Exhibit)(Bottome Turanchik, Lydia) (Entered: 12/20/2004)
12/21/2004	29 c	MOTION to Dismiss <i>Entire Case</i> by Commonwealth of Massachusetts (Department of Revenue). (McAuliffe, Eileen) Modified on 12/22/2004 to

		substitute PDF file - attorney originally attached memorandum rather than motion to this entry(Hurley, Virginia). Additional attachment(s) added on 12/23/2004 (Hurley, Virginia). (Entered: 12/21/2004)
12/21/2004	• 30	MEMORANDUM in Support re <u>29</u> MOTION to Dismiss <i>Entire Case</i> filed by Commonwealth of Massachusetts (Department of Revenue). (McAuliffe, Eileen) Additional attachment(s) added on 12/23/2004 (Hurley, Virginia). Modified on 12/23/2004 to add cover page to supporting documents. These documents are filed in the clerk's office. Edge, Eugenia). (Entered: 12/21/2004)
12/21/2004	• 31	CERTIFICATE OF CONSULTATION re <u>29</u> MOTION to Dismiss <i>Entire Case Per Local Rule 7.1 (A) (2)</i> by Eileen Ryan McAuliffe on behalf of Commonwealth of Massachusetts (Department of Revenue). (McAuliffe, Eileen) Additional attachment(s) added on 12/23/2004 (Hurley, Virginia). (Entered: 12/21/2004)
12/22/2004	•	Electronic notice of correction to docket made by Court staff. Correction: Document #29 substituted at request of attorney McAuliffe. Original PDF file submitted with entry contained memorandum in support, not motion. (Hurley, Virginia) (Entered: 12/22/2004)
12/22/2004	• 32	REPLY to Response to Motion re <u>9</u> MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/30/2004)
12/22/2004	• 33	Opposition re <u>14</u> MOTION for Summary Judgment filed by Lisa J. Bayko, Christine A. Faro, Charles R. Rotondi.c/s (Edge, Eugenia) (Entered: 12/30/2004)
12/23/2004	•	Notice of correction to docket made by Court staff. Correction: corrected documents 29,30 and 31

		substituted at request of attorney - original submissions did not contain proper signature. (Hurley, Virginia) (Entered: 12/23/2004)
01/03/2005	•34	Assented to MOTION for Extension of Time to February 4, 2005 to File Response/Reply as to <u>29</u> MOTION to Dismiss <i>Entire Case</i> , <u>30</u> Memorandum in Support of Motion, by United States of America. (Bottome Turanchik, Lydia) (Entered: 01/03/2005)
01/04/2005	•35	First Opposition re <u>29</u> MOTION to Dismiss <i>Entire Case</i> filed by Helen E. Bayko, Michael J. Bayko. (Attachments: # <u>1</u> Exhibit Exhibit A - Loan Chalk) (Sullivan, Timothy) (Entered: 01/04/2005)
01/05/2005	•	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>34</u> Motion for Extension of Time to File Response/Reply re <u>34</u> Assented to MOTION for Extension of Time to February 4, 2005 to File Response/Reply as to <u>29</u> MOTION to Dismiss <i>Entire Case</i> , <u>30</u> Memorandum in Support of Motion, Responses due by 2/4/2005 (Lyness, Paul) (Entered: 01/05/2005)
01/13/2005	•36	REPLY to Response to Motion re <u>9</u> MOTION for Summary Judgment filed by Charles R. Rotondi, Christine A. Faro, Lisa J. Bayko.c/s (Edge, Eugenia) (Entered: 01/25/2005)
02/04/2005	•37	MOTION for Extension of Time to February 8, 2005 to File Response/Reply as to <u>29</u> MOTION to Dismiss <i>Entire Case</i> by United States of America.(Bottome Turanchik, Lydia) (Entered: 02/04/2005)
02/08/2005	•38	MOTION to Deposit Surplus Funds into Court and Withdraw by GMAC Mortgage Corporation.(Abaid, Kim) (Entered: 02/08/2005)
02/08/2005	•39	MEMORANDUM in Opposition re <u>29</u> MOTION to Dismiss <i>Entire Case</i> filed by United States of America. (Miller, Gerald) (Entered: 02/08/2005)

02/09/2005	• 40	MOTION for Leave to File by Commonwealth of Massachusetts (Department of Revenue). (McAuliffe, Eileen) (Entered: 02/09/2005)
02/10/2005	• 41	Opposition re <u>38</u> MOTION to Deposit Funds filed by Helen E. Bayko, Michael J. Bayko. (Sullivan, Timothy) (Entered: 02/10/2005)
02/10/2005	• 42	Opposition re <u>38</u> MOTION to Deposit Funds ( <i>Limited</i> ) filed by United States of America. (Bottome Turanchik, Lydia) (Entered: 02/10/2005)
03/03/2005	• 43	REPLY to Response to Motion re <u>40</u> MOTION for Leave to File filed by Commonwealth of Massachusetts (Department of Revenue). (McAuliffe, Eileen) Additional attachment(s) added on 3/4/2005 (Edge, Eugenia). (Entered: 03/03/2005)
03/10/2005	•	NOTICE of Hearing: Status Conference set for 3/16/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 03/10/2005)
03/16/2005	•	Electronic Clerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Motion Hearing held on 3/16/2005 re <u>29</u> MOTION to Dismiss <i>Entire Case</i> filed by Commonwealth of Massachusetts (Department of Revenue),. The court reserves its decision.(Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 03/16/2005)
03/24/2005	• 44	Judge George A. O'Toole Jr.: ORDER entered GRANTING <u>29</u> Motion to Dismiss. The action is DISMISSED in its entirety. (Lyness, Paul) (Entered: 03/25/2005)
03/24/2005	• 45	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT in favor of Defendant against Plaintiff (Lyness, Paul) (Entered: 03/25/2005)
03/25/2005	•	Judge George A. O'Toole Jr.: Electronic ORDER

		entered granting nunc pro tunc <u>37</u> Motion for Extension of Time to File Response/Reply re <u>37</u> MOTION for Extension of Time to February 8, 2005 to File Response/Reply as to <u>29</u> MOTION to Dismiss <i>Entire Case</i> , <u>40</u> MOTION for Leave to File, granting nunc pro tunc <u>40</u> Motion for Leave to File (Lyness, Paul) (Entered: 03/25/2005)
05/20/2005	•46	NOTICE OF APPEAL as to <u>44</u> Order on Motion to Dismiss, <u>45</u> Judgment by United States of America. \$ 255 Reason fee is not required: United States' Appeal NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 6/9/2005. (Bottome Turanchik, Lydia) (Entered: 05/20/2005)
06/03/2005	•47	TRANSCRIPT ORDER FORM by United States of America re <u>46</u> Notice of Appeal, (Bottome Turanchik, Lydia) (Entered: 06/03/2005)